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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,423	03/17/2004	Karen Lynn Botner	03-0802-US	3857

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EXAMINER
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NEWTON, JARED W

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 02/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center"><b>Office Action Summary</b></p>	<p><b>Application No.</b></p> <p align="center">10/802,423</p>	<p><b>Applicant(s)</b></p> <p align="center">BOTNER, KAREN LYNN</p>	
	<p><b>Examiner</b></p> <p align="center">Jared W. Newton</p>	<p><b>Art Unit</b></p> <p align="center">3634</p>	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 January 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4,7-15,21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,7-10,13-15 and 22 is/are rejected.
- 7) ☒ Claim(s) 1,11,12 and 21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>8/10/04</u> .   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

Claims 5, 6, and 16-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on January 20, 2006. Applicant is thanked for his timely election.

### ***Specification***

The disclosure is objected to because of the following informalities:

- Page 10, Line 23 should read, “integrally [[construction]] constructed”

Appropriate correction is required.

### ***Claim Objections***

Claims 1 and 11 are objected to because of the following informalities: The following changes should be made to positively recite the subject matter of the claimed invention:

- “...to define an interior space [[for]] receiving therein a plurality...” (Claim 1, Line 8)
- “...made part thereof [[to engage]] engaging a pin...” (Claim 11, Line 8)

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 4,862,795 to Hawkins.

Referring to Figures 2 and 7-9, Hawkins discloses a rack and tray assembly capable of supporting foot apparel and containing debris and liquids released therefrom, said assembly comprising: a tray 40 having a base 42 integrally connected to inclined sides 44 extending upwardly therefrom, along the periphery thereof and terminating at an upper rim 46, said rim comprising a ledge having upper and lower exposed surfaces; and a frame 60 having a pair of shortened end members and a pair of side members collectively joined end to end to define an interior space for receiving therein a plurality of support members integrally connected to said side members and positioned parallel to said shortened end members (see FIG. 2), said frame having an overall geometric configuration substantially conforming to said ledge to permit said frame to rest atop said upper exposed surface (see FIG. 1), each of said support members being equally spaced apart to form a plurality of elongate openings capable of allowing passage into said tray debris and liquids released from foot apparel resting atop said support

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members. Hawkins further discloses said inclined sides extending angularly outward from said base by approximately 25 degrees (see FIG. 1) from an axis perpendicular to said base. Hawkins further discloses said rim comprising a supportive wall integrally connected thereto and extending upwardly from said upper exposed surface of said ledge to supplement rigidity of said tray and retain positioning of said frame about said tray (see FIG. 1) in a situation where foot apparel would be slidably positioned about said support members. Hawkins further discloses said supportive wall comprising a height substantially equivalent to the height of said frame capable of mitigating undue interference between said supportive wall and foot apparel as the foot apparel traverses said support members and onto and over said supportive wall and said frame.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 4,488,535 to Johnson in view of US Patent No. 2,006,385 to Dikeman.

Johnson discloses a foldable grill comprising a folding frame structure having left and right legs pivotally fastened to an upper grate portion 7 via hook elements 9 (see FIGS. 1 and 2). Johnson further disclose said legs comprising upper and lower elongate horizontal members 3,4 and a pair of elongate vertical members 2 each having ends

fastened to one another to form a leg of rectangular configuration (see FIG. 1). Johnson further discloses a tray 12, but does not disclose a tray support assembly

Referring to Figure 8, Dikeman discloses an adjustable assembly comprising a tray having 1 having a base integrally connected to inclined sides extending upwardly therefrom, along the periphery thereof and terminating at an upper rim *d* comprising a ledge with upper and lower exposed surfaces; a frame structure 2" (see FIG. 7) supported by side walls 5, said structure supporting a tray support assembly 3" comprising left and right tray rails 14 (see FIG. 8) integrally connected thereto and hanging downwardly therefrom to engage said lower exposed surface to the extent of supporting said tray below said tray support assembly (see FIG. 8).

The Dikeman and Johnson references are analogous art because they are from the same field of endeavor—grate and pan (tray) cooking apparatuses—and they have similar cross-referenced classifications. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the grate assembly as disclosed by Johnson with the right and left tray rails and fitted tray as disclosed by Dikeman. The motivation would have been to provide a cooking means within the frame that can be both integrally and separately useable. Johnson discloses the desirability of a compact, easily moveable, and adjustable grate and pan assembly, but does not provide a means for integrating said grate and said pan. Dikeman recites, "A further object [of the invention] is to produce an adjustable combination broiling pan and grate that is convertible into separate oven units, each capable of being used in the oven independently of the other." (See Col. 1, Ln. 9-13). The inclusion of pan support rails

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suspended from the grate of Johnson would be an obvious improvement, providing a means for integrating the pan and grate, and promoting further overall adjustability and flexibility of the grill.

Claims 8-10 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over '535 to Johnson in view of '385 to Dikeman as applied to claim 7 above, and further in view of US Patent No. 4,953,473 to Tomaka et al.

In regard to claim 8, Johnson in view of Dikeman discloses an assembly comprising all of the limitations of claim 7, but do not disclose the stem and aperture connection means.

Tomaka et al. disclose a tray support comprising a grate (tray) 20 and legs 30 (see FIG. 6). Tomaka et al. further disclose a connection means between said grate and said legs comprising pins 36 attached to said grate, and insertable into and through apertures 34 on the inner face of said legs 32 (see FIG. 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to replace the connection means between the legs and grate of Johnson with that as disclosed by Tomaka et al. by providing said grate with the pins, and said legs the curved ends defining said aperture. The respective connection means to Johnson and Tomaka et al. are functional equivalents. The motivation for replacing the connection means of Johnson with that of Tomaka et al. would be a design choice depending on whether or not one of ordinary skill preferred to use less material for the grate portion, or the leg portions.

In regard to claim 9, Dikeman discloses the tray rails as set forth above, further comprising a generally L-shape and vertical and horizontal elements (see FIG. 8).

In regard to claim 10, Dikeman further shows the horizontal portion of said rails comprising a flat rod portion extending from one end to the other (see FIG. 7 – shown in phantom).

In regard to claim 13, Johnson and Dikeman disclose a plurality of support bars of elongate form situated perpendicular and connected to said horizontal supports and equally spaced apart from one another forming lengthened opening therein between capable of allowing debris and liquid to pass therethrough.

In regard to claim 14, Johnson discloses an embodiment of said legs, wherein said legs are formed from a continuous piece of tubing and bent accordingly to define said upper 3' and lower elongate horizontal members and said elongate vertical members 2' (see FIG. 4).

In regard to claim 15, the examiner takes official notice that it would have been obvious to one of ordinary skill in the art at the time of the invention to use a variety of materials to construct the above described inventions. It is well known in the art to use a variety of materials, including metals, plastics, and non-corrosive materials in cooking applications such as those set forth above.

#### ***Allowable Subject Matter***

Claims 11 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the



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limitations of the base claim and any intervening claims. Claims 9, 10, 13-15, and 22 would be allowable if rewritten to depend from the new claim incorporating the subject matter of claims 7, 8, and 11.

Claims 21 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 2-4 would be allowable if rewritten to depend from the new claim incorporating the subject matter of claims 1 and 21.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

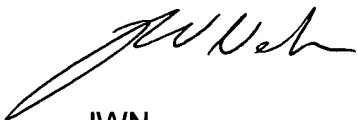
- US Patent No. 5,016,364 to Cochrane showing a shoe dryer
- US Patent No. 3,762,573 to Collins et al. showing a shoe rack with a tray
- US Patent No. 3,589,522 to Chiodo showing a shoe drying rack
- US Patent No. 3,199,438 to Myler et al. showing a pan, grate, and rack assembly
- US Patent No. 2,564,423 to Ellis showing a shoe rack
- US Patent No. 1,837,263 to Glidden showing a folding shoe rack
- US Patent No. 1,650,634 to Lutzler showing a pan and grate assembly
- US Patent No. 1, 167,550 to Forsyth showing a folding shoe rack

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jared W. Newton whose telephone number is (571) 272-2952. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JWN  
February 11, 2006



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SUPERVISORY PATENT EXAMINER